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Attorney for Defendant

United States District Court
Eastern District of Washington
Before the Hon. Rosanna M. Peterson

United States of America,

Plaintiff,

v.

Joel Chavez-Duran,

Defendant.

No. 4:21-CR-06028-RMP-3

Motion to Suppress Evidence
Obtained as a Result of an
Illegal Search

Pretrial Conference
August 26, 2021 at 9:45 AM
With oral argument

Defendant Chavez-Duran, through his attorney of record, moves the Court to suppress evidence obtained by the Government in violation of the Fourth Amendment's prohibition on unreasonable searches.

A. Relief Requested

Defendant Chavez-Duran asks the Court to find that the "frisk" conducted by law enforcement personnel after the traffic stop was

1 made without a warrant and unreasonable. Defendant further asks
2 the Court to exclude evidence obtained as a result of the search,
3 namely the pills found in Defendant's pocket.

4 **B. Relevant Background Facts**

5 Beginning in May 2021, the DEA began investigating co-defendant
6 Jose Rueles-Mendoza for drug trafficking. Complaint (ECF No. 1),
7 *United States v. Chavez-Duran*, No. 4:21-mj-07164-MKD, at 4 (E.D.
8 Wash July 22, 2021) ("Complaint"). Based on that investigation,
9 DEA TFO Michael Pitts applied for and obtained a search warrant
10 on July 14, 2021 for a black Ford Edge (WA/BUG3081). *Id.* at 5.

11 That warrant stated:

12 An application by a federal law enforcement officer or an
13 attorney for the government requests the search of the
14 following person or property located in the Eastern District
15 of Washington []: A black 2012 Ford Edge bearing
16 Washington state license plate BUG3081, Vehicle
17 Identification Number (VIN): 2FMDK4KC5CBA71221
18 registered to Daniel ESPINOZA Chavez, 3829 West
19 Kennewick Ave #1/2, Kennewick, WA (Target Vehicle 2)
20 further described in Attachment A attached hereto and
incorporated herein by this reference.

I find that the affidavits or any recorded testimony
establish probable cause to search and seize the person or
property described above and that such search will reveal
identify the person or describe the property to be seized
See Attachment B attached hereto and incorporated
herein by this reference.

1 Bates 00000010.05. Attached thereto was a document entitled
2 “Target Vehicle 2.” Presumably, this was the Attachment A referred
3 to in the warrant. That document stated:

4 Described as a black 2012 Ford Edge bearing Washington
5 state license plate BUG3081, Vehicle Identification
6 Number (VIN): 2FMDK4KC5CBA71221. This vehicle was
7 utilized by an unknown subject who met with Jose
8 MENDOZA-Ruelas, a target of this investigation The
9 search is to include the entire vehicle. This vehicle is
10 registered to Daniel ESPINOZA Chavez. 3829 West
11 Kennewick Avenue, #1/2, Kennewick, WA and is
12 commonly parked at the address 3829 West Kennewick
13 Avenue, in the City of Kennewick, postal zip code 99336 in
14 the County of Benton, in the State of Washington.

15 Bates 00000010.07.

16 About 11:00 AM on July 21, 2021, TFO Pitts began surveilling the
17 residence of co-defendant Oscar Chavez-Garcia and saw the Ford
18 Edge. *Complaint*, at 5. Surveillance continued until about 2:50 PM
19 when an Affordable Landscaping truck parked at the residence. *Id.*
20 at 5-6. The truck and the Ford Edge then left the residence together.
Id. at 6. The Ford Edge stopped at a gas station where Detective
Magana observed Defendant Chavez-Duran exit and reenter the
Ford Edge. *Id.* at 7.

The Ford Edge joined the Affordable Landscaping truck at a
construction site and the vehicles’ occupants were observed

1 removing concrete from the driveway area. *Id.* The truck was seen
2 leaving the construction site at about 4:20 PM. *Id.* It was later
3 observed at the gas station at 5:00 PM. *Id.* Defendant Chavez-Duran
4 exited the truck, entered the gas station, reentered the truck, and
5 returned to the construction site. *Id.* at 7-8. At about 5:25 PM,
6 Defendant Chavez-Duran drove the Ford Edge away from
7 construction site. *Id.* at 8.

8 Pasco Police Officer Erickson and Kennewick Police Officer
9 Safranek stopped the Ford Edge at about 5:30 PM. *Id.* The officers
10 asked Defendant Chavez-Duran for his driver license, which he
11 provided to them. *Id.* They asked him for his phone number which
12 he provided to them. *Id.* They asked him for the phone number of
13 the phone in the vehicle, which he didn't know. *Id.* He gave them the
14 phone so they could find the number in the phone's settings. *Id.*

15 TFO Pitts approached the vehicle and informed Defendant
16 Chavez-Duran that they had a warrant to seize the vehicle and
17 search it. *Id.* at 9. TFO Pitts advised Defendant Chavez-Duran that
18 he was not under arrest and asked if he would like to speak to TFO
19 Pitts. *Id.* TFO Pitts noted "Based on [Defendant Chavez-Duran's]
20 demeanor and manner of speaking, I observed [he] was nervous and

1 appeared to want to distance himself from the situation and/or
2 vehicle.” *Id.*

3 Defendant Chavez-Duran will testify that he told the officers he
4 wanted to walk back to the construction site, but he officers refused
5 to allow him to leave on his own. They “offered” him a “courtesy” ride
6 back to the construction site. *Id.* at 9-10. Having no other
7 alternative, he agreed to ride back to the construction site with the
8 officers. *Id.* at 10. Defendant Chavez-Duran exited the Ford Edge.
9 *Id.* at 10. Officer Safranek began patting defendant Chavez-Duran
10 down while TFO Pitts told Chavez-Duran they needed to check him
11 for weapons prior to transport. *See id.* TFO Pitts and Officer
12 Safranek lacked reasonable suspicion that Chavez-Duran was
13 armed with any weapons or dangerous.

14 Officer Safranek felt pills in defendant Chavez-Duran’s pocket. *Id.*
15 As Officer Safranek began telling TFO Pitts he suspected there were
16 pills in Defendant Chavez-Duran’s pocket, Defendant Chavez-Duran
17 volunteered there were over 2,000 pills in his pocket. *Id.* Defendant
18 Chavez-Duran was arrested and searched incident to arrest. *Id.* The
19 officers found pills in his pocket. *Id.*

C. Analysis

The Fourth Amendment to the Constitution of the United States provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Nevertheless, a valid search warrant does not also give police permission to search everyone present at the site of the search.

Yvarra, 444 U.S. at 91-92. Because the scope of the search warrant for the Ford Edge did not include a search of Defendant Chavez-Duran's person, Officer Safranek's frisk was warrantless. Because it was warrantless, it was presumptively unreasonable. *Arizona v. Gant*, 556 U.S. 332, 338 (2009) ("searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment"). Exceptions to warrant requirement are "jealously and carefully drawn," *Jones v. United States*, 357 U.S. 493, 499, 78 S.Ct. 1253 (1958); they are "specifically established and well-delineated[,]" *Gant*, 556 U.S. at 338.

1 No exceptions to the warrant requirement apply to the Officer
2 Safranek's frisk of defendant Chavez-Duran.

3 First, "[a]mong the exceptions to the warrant requirement is a
4 search incident to lawful arrest." *Gant*, 556 U.S. at 338. Here,
5 however, TFO Pitt explicitly told defendant Chavez-Duran he was
6 not under arrest, Officer Safranek's then frisked defendant Chavez-
7 Duran, and TFO Pitt then arrested defendant Chavez-Duran. A
8 search occurring *before* an arrest is not incident to that arrest. The
9 search incident to arrest exception does not apply.

10 Second, when an officer "approach[es] a person for purposes of
11 investigating possibly criminal behavior[.]" the officer may make "a
12 reasonable search for weapons for the protection of the police officer,
13 where he [or she] has reason to believe that he [or she] is dealing
14 with an armed and dangerous individual[.]" *Terry v. Ohio*, 391 U.S.
15 1, 22, 27, 88 S.Ct. 1868 (1968). Factors that might suggest a person
16 is armed include: a visible bulge in the person's clothing, suggesting
17 the presence of a weapon; sudden movements; and repeated
18 attempts to reach for an object that is not visible. *United States v.*
19 *Flatter*, 456 F.3d 1154, 1157-58 (9th Cir. 2006). "A lawful frisk does
20 not always flow from a justified stop. Each element, the stop and the

1 frisk, must be analyzed separately; the reasonableness of each must
2 be independently determined. The standard for justifying a frisk is
3 whether a reasonably prudent person in the circumstances would
4 be warranted in the belief that his or her safety or that of others was
5 in danger.” *United States v. Thomas*, 863 F.2d 622, 628 (9th Cir.
6 1988). Here, the officers delayed asking Defendant Chavez-Duran to
7 exit the vehicle after stopping the vehicle. This delay suggests the
8 officers were not particularly concerned for their own safety at that
9 time. A finding that they suddenly were concerned for their safety
10 minutes later is incongruent with their behavior immediately
11 following the stop. Furthermore, all the officers knew about this
12 vehicle’s connection to drug trafficking was that an unidentified
13 subject drove the Ford Edge at 4:55 PM on June 8, 2021 to 1010
14 Smith Ave, Richland, WA and appeared to hand a white plastic tube
15 to co-defendant Mendoza. Bates 00000004.33-00000004.38. Co-
16 defendant Mendoza then participated in a controlled buy of the
17 white plastic tube that was later found to contain
18 methamphetamine. *Id.* The registered owner of the vehicle was
19 Daniel Espinoza-Chavez. Bates 00000004.36. The confidential
20 source used in the controlled buy told officers that co-defendant

1 Mendoza's source of supply was the person who operates the
2 landscaping company. Bates 00000004.38-00000004.39. Officers
3 knew this person to be co-defendant Daniel Espinoza-Chavez. Bates
4 00000004.69.

5 When the vehicle was stopped on June 21, 2021 and the officers
6 identified the driver to not be co-defendant Daniel Espinoza-Chavez,
7 any inference that the driver was connected to drug trafficking was
8 speculative. Thus, the officers could not reasonably infer Defendant
9 Chavez-Duran was dangerous because of some connection to drug
10 trafficking. This exception to the warrant requirement does not
11 apply.

12 Third, a warrant is not required if a person voluntarily consents
13 to the search. *Fernandez v. California*, 571 U.S. 292, 298, 134 S.Ct.
14 1126 (2014); *Georgia v. Randolph*, 547 U.S. 103, 106, 126 S.Ct.
15 1515 (2006). The Government bears the burden of proving voluntary
16 consent. *United States v. Mendenhall*, 446 U.S. 544, 557, 100 S.Ct.
17 1870 (1980). It cannot fairly be said that one consents to a search
18 voluntarily when the person has no way of avoiding the search. Such
19 was the situation facing Defendant Chavez-Duran. He told officers
20 he would walk back to the construction site, but they would not let

1 him. Instead, they require him to accept a “courtesy” ride to the
2 construction site. According to TFO Pitts’ account, in a bait-and-
3 switch move that would make a car salesman green with envy, the
4 officers then told Defendant Chavez-Duran they needed to search
5 him for weapons before this “courtesy” ride. TFO Pitts states that
6 Defendant Chavez-Duran agreed to the search. Having no
7 alternative, defendant Chavez-Duran’s consent cannot be said to
8 have done so voluntarily.

9 On the other hand, defendant Chavez-Duran’s account of the
10 events differs from TFO Pitts. He will testify that Officer Safranek
11 was already frisking him when TFO Pitts began advising Defendant
12 Chavez-Duran that they would need to search him before the
13 “courtesy” ride. Defendant Chavez-Duran will testify that they did
14 not ask for his permission to pat him down and he did not agree to
15 the pat down.

16 “The exclusionary rule prohibits introduction into evidence of
17 tangible materials seized during an unlawful search...” *Murray v.*
18 *United States*, 487 U.S. 533, 536, 108 S.Ct. 2529 (1988) (*citing*
19 *Weeks v. United States*, 232 U.S. 383 (1914)). Likewise, “inculpatory
20 statements made after [controlled substances are] found” are

1 inadmissible if “[t]hose statement resulted directly from the unlawful
2 search[.]” *Ruiz v. Craven*, 425 F.2d 235, 236 (9th Cir. 1970).
3 “[E]vidence obtained in violation of the Fourth Amendment by
4 officers acting in objectively reasonable reliance on a search warrant
5 ... need not be excluded.” *United States v. Leon*, 468 U.S. 897, 927,
6 104 S. Ct. 3405 (1984) (Blackmun, J., concurring). However, it
7 cannot be said that

8
9 Here, defendant Chavez-Duran’s statement about the pills in his
10 pocket was made after Officer Safranek’s unlawful search and was
11 a direct result of that search. The pills themselves were also the
12 direct result of Officer Safranek’s unlawful search. Accordingly, the
13 statement and the pills must both be excluded at trial.

14 **D. Conclusion**

15 The search warrant for the Ford Edge did not authorize the search
16 of defendant Chavez-Duran’s person rendering the search *per se*
17 unreasonable. No exception to the warrant requirement applies:
18 defendant Chavez-Duran was not arrest until after the search, a
19 reasonably prudent person would not have believed he was armed

1 and dangerous, he did not consent to the search. Defendant Chavez-
2 Duran's statement and the pills must be excluded from trial.

3
4 Dated: August 20, 2021

Respectfully Submitted,

5 s/Adam R. Pechtel

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SERVICE CERTIFICATE

I certify that August 20, 2021, I electronically filed the foregoing with the District Court Clerk using the CM/ECF System, which will send notification of such filing to the following:

Stephanie Van Marter, Attorney for Plaintiff United States

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